

**ATTORNEY GENERAL'S OPEN RECORDS AND MEETINGS OPINION  
NO. 98-O-02**

DATE ISSUED: January 27, 1998

ISSUED TO: Bismarck Public School Board President Melvin Fischer  
and District Superintendent Lowell Jensen

**CITIZEN'S REQUEST FOR OPINION**

On November 12, 1997, this office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Sophia Preszler regarding whether proper notice was provided of a meeting of the Bismarck School District's Executive Cabinet held on November 6, 1997. To determine whether public notice was required, it is necessary to determine whether the Executive Cabinet is a "governing body" of a public entity, thereby being subject to the meeting notice requirements of N.D.C.C. § 44-04-20. See N.D.C.C. § 44-04-20(1).

**FACTS PRESENTED**

A Bismarck School Board policy provides: "The Superintendent shall provide leadership in implementing an educational program within available funding and School Board policies." Bismarck School Board Policy: Superintendent's Job Description, CE, issued 11-10-97. This same School Board policy lists the performance responsibilities of the superintendent. These responsibilities include the following:

The Superintendent shall participate in all School Board meetings by assisting the board president in the development of the meeting agenda, by preparing background materials and analyses of issues brought to the board, and by preparing recommendations on all issues brought to the board for decisions.

The Superintendent shall assist the School Board with the development of school Board policy and shall establish rules, forms, guidelines, and procedures to implement board policy.

(Emphasis added.) A different Bismarck School Board policy provides:

The school board encourages the superintendent and administrative staff to create and maintain appropriate mechanisms such as councils, cabinets and committees to

1. foster good communications within the staff;

2. allow each member of the staff to have a voice in the development of policies and in the making of decisions affecting them.

Bismarck School Board Policy: Councils, Cabinets and Committees, CL, issued 2-11-80.

The Superintendent has established rules to implement School Board policy. One of these administrative rules provides:

Councils, Cabinets and Committees

The superintendent of schools may establish an administrative cabinet as an advisory and deliberative body consisting of those members of the school staff who hold major administrative positions. Its precise membership is to be determined by the superintendent who serves as chairman of the cabinet.

As a group, the cabinet will discuss and attempt to develop effective modes of operation for implementing policies. Functioning in an advisory capacity, individual members or groups as a whole may make suggestions and recommendations with respect to policy which in turn will be transmitted through the superintendent to the school board for consideration. As a cabinet it possesses no inherent authority, nor does it exercise any executive function.

The administrative cabinet is concerned with matters relating to:

1. Curriculum
2. Instruction
3. Pupils
4. Teaching and custodial personnel
5. Building administration
6. Budget development
7. Internal business operation
8. Maintenance and custodial standards
9. Community relations

The cabinet functions as a channel of communication. Its individual members bear the responsibility of

disseminating information to staff members under their charge, in promoting understanding of the total school program and assuring its harmonious operation. It is the responsibility of the superintendent to keep the cabinet informed of decisions and activities of the school board pertaining to its concerns. Conversely, the cabinet has the responsibility of informing the superintendent and through him, the school board, of suggestions and problems originating with the school staff.

Bismarck Public School District Administrative Rule: Councils, Cabinets and Committees, CL-R, issued 2-13-78. Pursuant to this rule, the Superintendent has formed the Superintendent's Cabinet and the Superintendent's Executive Cabinet. The Superintendent's Cabinet consists of the assistant superintendents, four principals, the business manager, and other district-wide administrators. Our office has determined that the Superintendent's Cabinet is not subject to the open meetings law because it is not a "governing body." 1997 N.D. Op. Att'y Gen. 97-O-02. The Superintendent's Executive Cabinet consists of the principals of the Bismarck public schools, the business manager, and other district-wide administrators.

It is the position of the Bismarck School District that notice of meetings of the Superintendent's Executive Cabinet is not required because the Executive Cabinet is not a "governing body" and therefore is not subject the notice requirements of N.D.C.C. § 44-04-20.

#### ISSUE

Whether the Superintendent's Executive Cabinet is a "governing body" of a public entity, thereby being subject to the notice requirements of N.D.C.C. § 44-04-20.

#### ANALYSIS

In a former opinion, the Attorney General concluded that the Superintendent's Cabinet is not a "governing body" of a public entity because it was not created by a rule of the school board and it was not delegated any authority by the Bismarck School Board. 1997 N.D. Op. Att'y Gen. 97-O-02. For the same reasons as given in that opinion, the Executive Cabinet is not a "governing body" of a public entity.

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#### CONCLUSION

Based on the same analysis as stated in 1997 N.D. Op. Att'y Gen. 97-O-02, it is my opinion that the Superintendent's Executive Cabinet is not subject to the open meetings law because it is not a "governing body." Therefore, N.D.C.C. § 44-04-20 does not require notice of meetings of the Superintendent's Executive Cabinet to be provided to the public.

It is my further opinion that there was no violation of N.D.C.C. § 44-04-20 when notice of a meeting of the Superintendent's Executive Cabinet was not provided, because the Superintendent's Executive Cabinet is not subject to the notice requirements of N.D.C.C. § 44-04-20.

Heidi Heitkamp  
ATTORNEY GENERAL

Assisted by: Leah Ann Schneider  
Assistant Attorney General

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